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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,164	06/19/2003	Sudeep M. Kumar	100390-06430	9722
22852 7590 10/19/2007 FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER TURK, NEIL N	
			ART UNIT 1797	PAPER NUMBER
			MAIL DATE 10/19/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/600,164

Applicant(s)

KUMAR ET AL.

Examiner

Neil Turk

Art Unit

1797

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 27 September 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: 1-27 and 29-58.
Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER


11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

Continuation of 3. NOTE: The amendment to claim 20 to remove rhodium as a material for at least one of the electrodes raises a new issue and would require further search and consideration.

Continuation of 5. Applicant's reply has overcome the following rejection(s): rejection of claims 22, 23, and 56-58 under 35 USC 112, 1st paragraph has been removed.

Continuation of 11. does NOT place the application in condition for allowance because: of arguments of record. Further, with regards to claims 1-24 and 37-58 rejected under 35 USC 112, 2nd paragraph as omitting essential structural cooperative relationships, Applicant argues that the specification does not indicate any one orientation of the claimed elements is "essential". Examiner asserts that the elements have not been structurally related relative to each other as essential for claiming the device. Examiner is not asking Applicant to limit the device to an "essential" or "non essential" orientation of elements, but is requiring the elements recited in the claims be given their essential structural cooperative relationships. Applicant has not related the parts to form the ECL device. With regards to claims 37-58 rejected under 35 USC 112, 2nd paragraph, as omitting essential steps, Applicant argues that claim 37 provides the step of inducing electrochemiluminescence. Examiner argues that the body of the claim does not recite method steps for accomplishing the assay. Further, Applicant argues that Examiner has not brought forth any anticipatory references so anticipation of the apparatus and method claims is moot. Examiner asserts that this statement of analogous patentable weight between the apparatus claims and the method claims was a statement of how the method claims would be read, given that the method claims do not establish any method steps for carrying out the assay, and is not a statement of patentability with respect to any specific prior art. Further, Examiner asserts that claims 37-55 have been rejected over prior art as the prior art of record contains the same structural elements and is thereby capable of performing a step of inducing electrochemiluminescence. With regard to claims 1-9, 20, 21, 24, and 37-55 rejected under 35 USC 103(a) over Niyama (5,993,740) in view of Bard (3,900,418) and Tench (4,132,605), Applicant argues that such a combination does not render the claims obvious because Tench relates to metal plating and one of skill in the present area of electrochemiluminescence would have no reason to use the metal plating electrodes in the ECL cell of Niyama. Examiner argues that Bard discloses several electrode materials and that such materials are universal for use in an ECL solution. Examiner argues that Tench discloses analogous subject matter of working electrodes and counter electrodes, of which a counter electrode is known to be platinum-10% rhodium. Examiner asserts that there are no such deficiencies in Niyama/Bard/Tench and thereby the rejection of claims 10-19 and 33-36 under 35 USC 103(a) over Niyama in view of Bard and Tench as previously applied and further in view of Wohlstadter (6,207,369) is maintained proper. Applicant further argues that Wohlstadter does not disclose a waveform generator/potentiostat that is capable of maintaining said counter electrode at a constant potential or at a potential that does not vary relative to a potential of said light detector. With regards to claims 1-21 and 24-55 rejected under 35 USC 103(a) over Liljestrand (6,200,531) in view of Niyama, Bard, Tench, and Kovacs, Examiner asserts that no such deficiencies exist, as discussed above, and the rejection is thereby maintained.

Continuation of 13. Other: Examiner notes that claims 22, 23, and 56-58 remain only rejected under 35 USC 112, 2nd paragraph.


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